

AMENDMENTS TO THE CLAIMS

WHAT IS CLAIMED IS:

1. (Currently Amended) A device for retracting tissue to provide access to a spinal location within a patient, said device comprising:

an elongate body having a proximal end and a distal end and defining a length between the proximal and distal ends such that the distal end can be positioned inside the patient adjacent the spinal location, said elongate body comprising a generally oval shaped proximal portion and an expandable distal portion; and

a passage extending through the elongate body between the proximal and distal ends, ~~said passage being defined by a smooth metal inner surface extending substantially entirely around the perimeter of said passage between the proximal and distal ends;~~

wherein said elongate body is expandable between a first configuration sized for insertion into the patient and a second configuration wherein the cross-sectional area of said passage at the distal end is greater than the cross-sectional area of said passage at the proximal end, wherein the passage is substantially enclosed by the elongate body between the proximal and distal ends in both the first configuration and the second configuration.

2. (Original) The device of Claim 1, wherein said distal portion is generally oval shaped in the first configuration.

3. (Original) The device of Claim 1, wherein said proximal portion and said distal portion comprise discrete members.

4. (Original) The device of Claim 1, wherein said distal portion comprises a first member and a second member.

5. (Original) The device of Claim 1, wherein said distal portion comprises a first overlapping portion and a second overlapping portion, the first and second overlapping portions defining an overlap area, wherein the extent of overlap area is reduced when said distal portion is in the second configuration.

6. (Original) The device of Claim 1, wherein said proximal portion is pivotable relative to said distal portion.

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7. (Original) The device of Claim 1, wherein said distal portion comprises a first dimension of about 24 mm and a second dimension of about 35 mm when said elongate body is in said first configuration.

8. (Original) The device of Claim 1, wherein said distal portion comprises a first dimension of about 45 mm and a second dimension of about 70 mm when said elongate body is in said second configuration.

9. (Original) The device of Claim 8, wherein said distal portion comprises a first dimension of about 24 mm and a second dimension of about 35 mm when said elongate body is in said first configuration.

10. (Original) The device of Claim 1, wherein said proximal portion has a cross section having a first dimension of about 24 mm and a second dimension of about 35mm.

11. (Currently Amended) A device for providing access to a surgical location within a patient, said device comprising:

an elongate body having a proximal end, a distal end, and an inner surface, said inner surface defining a passage extending through the elongate body and through which surgical instruments can be inserted to the surgical location, said elongate body capable of having a configuration when located within the patient wherein the cross-sectional area of said passage at a first location is greater than the cross-sectional area of said passage at a second location, wherein the first location is distal to the second location, said passage being substantially enclosed at least when the elongate body is in an insertion configuration, said proximal end passage capable of having a generally an oblong shaped cross section ~~between the second location and the proximal end.~~

12. (Currently Amended) The device of Claim 11, wherein said proximal end passage is capable of having a generally elliptical cross section ~~between the second location and the proximal end.~~

13. (Currently Amended) The device of Claim 11, wherein said proximal end passage is capable of having a non-circular cross section ~~between the second location and the proximal end.~~

14. (Original) The device of Claim 11, wherein the cross section is symmetrical about a first axis and a second axis, wherein the first axis is generally normal to the second axis.

15. (Original) The device of Claim 11, wherein the configuration of the elongate body between the first location and the second location is generally conical when the elongate body is located within the patient.

16. (Original) The device of Claim 11, wherein the first location is at a distal end of the elongate body, and the second location is at a proximal end of the elongate body.

17. (Original) The device of Claim 11, wherein the elongate body is configured to be inserted through the skin of the patient and is sized to provide access to a spinal location.

18. (Original) The device of Claim 11, wherein the elongate body is movable from a first configuration to a second configuration when located within the patient, the second configuration providing the cross-sectional area of said passage at a first location greater than the cross-sectional area of said passage at a second location, wherein the first location is distal to the second location.

19. (Original) The device of Claim 18, wherein the elongate body is expandable from the first configuration to the second configuration.

20. (Original) The device of Claim 18, wherein the elongate body has an oblong shaped cross section at its proximal end at least when the elongate body is in the second configuration.

21. (Original) The device of Claim 20, wherein the elongate body has an oblong shaped cross section along substantially the entire length between the proximal end and the second location.

22. (Original) The device of Claim 21, wherein said elongate body between the proximal end and the second location has a cross section having a first dimension of about 24 mm and a second dimension of about 35mm.

23. (Currently Amended) A device for providing access to a surgical location within a patient, said device comprising:

an elongate body having a proximal end, a distal end, and an inner surface, said inner surface defining a passage extending through the elongate body and through which surgical instruments can be inserted to the surgical location, said elongate body comprising a first arcuate side portion and a second arcuate side portion, said elongate body being expandable from a first configuration to a second configuration when located within the patient such that in the second configuration the cross-sectional area of said

passage at a first location is greater than the cross-sectional area of said passage at a second location, wherein the first location is distal to the second location, said first arcuate side portion and said second arcuate side portion being discrete members configured to substantially enclose said passage at least in the first configuration ~~said passage capable of having a generally oval shaped cross section between the second location and the proximal end.~~

24. (Currently Amended) The device of Claim 23, wherein the cross sectional area of the passage is symmetrical about a first axis and a second axis, wherein the first axis is generally normal to the second axis.

25. (Original) The device of Claim 23, wherein the configuration of the elongate body between the first location and the second location is generally conical when the elongate body is expanded within the patient.

26. (Original) The device of Claim 23, wherein the first location is at a distal end of the elongate body, and the second location is at a proximal end of the elongate body.

27. (Original) The device of Claim 23, wherein the elongate body is configured to be inserted through the skin of the patient and is sized to provide access to a spinal location.

28. (Original) The device of Claim 23, wherein the elongate body has a generally oval shaped cross section at its proximal end at least when the elongate body is in the second configuration.

29. (Original) The device of Claim 28, wherein the elongate body has a generally oval shaped cross section along substantially the entire length between the proximal end and the second location.

30. (Original) The device of Claim 29, wherein said elongate body between the proximal end and the second location has a cross section having a first dimension of about 24 mm and a second dimension of about 35mm.

31. (Currently Amended) A device for providing access to a surgical location within a patient, said device comprising:

an elongate body having a proximal end, a distal end, and an inner surface, said inner surface defining a passage extending through the elongate body, said passage sized to receive multiple ~~and through which~~ surgical instruments that can be inserted

simultaneously to the surgical location, said elongate body being actuatable from a closed configuration to an expanded configuration ~~capable of having a configuration when located within the patient~~ wherein the cross-sectional area of said passage in said expanded configuration at a first location is greater than the cross-sectional area of said passage at a second location, wherein the first location is distal to the second location, said proximal end of said elongate body defining an oblong shaped cross section at least in the expanded configuration, said passage being substantially enclosed in at least said closed configuration by a first generally arcuate side portion and a second generally arcuate side portion, said first and second generally arcuate side portions being discrete members capable of moving away from each other as said elongate body is actuated from said closed configuration to said expanded configuration ~~capable of having a cross section between the second location and the proximal end wherein the cross section is defined by first and second generally parallel opposing side portions and first and second generally arcuate opposing side portions.~~

32. (Original) The device of Claim 31, wherein the cross section is symmetrical about a first axis and a second axis, wherein the first axis is generally normal to the second axis.

33. (Original) The device of Claim 31, wherein said elongate body between the proximal end and the second location has a cross section having a first dimension of about 24 mm and a second dimension of about 35mm.

34. (Original) The device of Claim 31, wherein the configuration of the elongate body between the first location and the second location is generally conical when the elongate body is located within the patient.

35. (Original) The device of Claim 31, wherein the first location is at a distal end of the elongate body, and the second location is at a proximal end of the elongate body.

36. (Original) The device of Claim 31, wherein the elongate body is configured to be inserted through the skin of the patient and is sized to provide access to a spinal location.

37. (Canceled)

38. (Canceled)

39. (Canceled)

40. (Canceled)

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41. (Canceled)

42. (Canceled)

43. (Canceled)

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58. (Canceled)

59. (Canceled)

60. (New) The device of Claim 1, wherein said passage is defined by a metallic inner surface extending substantially entirely around a perimeter of said passage between the proximal and distal ends in both the first configuration and the second configuration.

61. (New) The device of Claim 1, wherein said elongate body comprises multiple discrete pieces defining said passage.

62. (New) The device of Claim 1, wherein said elongate body comprising a generally oval shaped proximal portion in the first configuration.

63. (New) The device of Claim 1, wherein said elongate body comprising a generally oval shaped proximal portion in the second configuration.

64. (New) The device of Claim 1, wherein said elongate body comprising the same generally oval shaped proximal portion in both the first and the second configurations.

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65. (New) The device of Claim 11, wherein said passage is substantially enclosed by said inner surface.

66. (New) The device of Claim 11, wherein said passage is sized to receive multiple surgical instruments simultaneously.

67. (New) The device of Claim 20, wherein the elongate body has an oblong shaped cross section at its proximal end when the elongate body is in the first configuration.

68. (New) The device of Claim 23, wherein said passage is sized to receive multiple surgical instruments simultaneously.

69. (New) The device of Claim 23, wherein said passage is substantially closed from said proximal end to said distal end at least in the first configuration.

70. (New) The device of Claim 23, wherein said passage is capable of having a generally oval shaped cross section between the first location and the proximal end at least in the first configuration.

71. (New) The device of Claim 23, wherein said first arcuate side portion and said second arcuate side portion are discrete members configured to substantially enclose said passage in the second configuration.

72. (New) The device of Claim 31, wherein the elongate body defines an oblong-shaped cross-section in the closed configuration.

73. (New) The device of Claim 31, wherein the passage is substantially enclosed by the first and second generally arcuate sides portions in the expanded configuration.

74. (New) The device of Claim 31, wherein the first and second generally arcuate side portions have at least one slot with a locking mechanism.

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SUMMARY OF INTERVIEW

Exhibits and/or Demonstrations

A spine with screws and an access device were demonstrated.

Identification of Claims Discussed

Claims 1, 11, 23 and 31.

Identification of Prior Art Discussed

Davison et al. (U.S. Patent No. 6,187,000) and Simonson (U.S. Publication No. 2003/0083688).

Proposed Amendments

The claims have been amended as proposed during the interview.

Principal Arguments and Other Matters

Applicant argued that the combination of Davison with Simonson is improper. In addition, Applicant and Examiner discussed possible claim amendments to define further structure to distinguish over the cited art.

Results of Interview

Applicant agreed to submit arguments in writing to attempt to overcome the obviousness rejection, and to submit amended claims as provided herein.